

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KATALIN HORVATH,

No. C 09-3121 MHP (pr)

Petitioner,

**ORDER OF DISMISSAL**

v.

IMMIGRATION CUSTOMS  
ENFORCEMENT, etc.; et al.,

Respondents.

Katalin Horvath has filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 which is now before the court for initial review. Horvath alleges that she is in the Contra Costa County Jail serving a jail sentence on a state criminal conviction. She also alleges that the Bureau of Immigration and Customs Enforcement ("BICE") has issued a hold against her for her removal from the United States.

Horvath's petition claims no violation of her rights under the Constitution, laws or treaties of the United States. Rather, she asks that the court order BICE to lift the hold it has placed on her for 24 hours so she can organize her life in preparation for her departure from the United States. It is a stretch to characterize this request as a claim for habeas relief, but the court will liberally construe it to be a claim that BICE is wrongfully refusing to lift its hold.

1 The petition has an incurable flaw: Horvath cannot meet the custody requirement.  
2 Federal jurisdiction over a petition for a writ of habeas corpus exists only for petitions filed  
3 by persons "in custody" at the time the petition is filed. 28 U.S.C. § 2241(c); Carafas v.  
4 LaVallee, 391 U.S. 234, 238 (1968). "[T]he bare detainer letter alone does not sufficiently  
5 place an alien in INS custody to make habeas corpus available." Campos v. INS, 62 F.3d  
6 311, 314 (9th Cir. 1995) (quoting Garcia v. Taylor, 40 F.3d 299, 303 (9th Cir. 1994)). The  
7 petitioner has to be in custody for the action she seeks to challenge in her habeas petition.  
8 Horvath is currently a California prisoner serving a sentence on a state court conviction and  
9 not considered to be in custody as a result of the BICE detainer filed against her. Yet BICE,  
10 rather than the sheriff in charge of the jail, is responsible for the allegedly wrongful refusal to  
11 lift the hold and that creates the predicament Horvath faces. Because she is not in BICE's  
12 custody, her petition challenging BICE's action or inaction is dismissed for want of  
13 jurisdiction.

14 The in forma pauperis application is GRANTED. (Docket # 3, # 4.)

15 The clerk shall close the file.

16 IT IS SO ORDERED.

17 DATED: April 2, 2010

  
Marilyn Hall Patel  
United States District Judge